

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

SAUL POLANCO-GOMEZ,

Defendant.

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X

22 Cr. 488 (JPC)

ORDER

JOHN P. CRONAN, United States District Judge:

In his sentencing submission, Defendant Saul Polanco-Gomez seeks a downward departure from the advisory Guidelines sentencing range on the grounds that (1) he served over two years of a state prison sentence for narcotics trafficking following the filing of the Complaint in this case on May 12, 2020, *see* Dkt. 1, and (2) Application Note 7 to § 2L1.2 of the Sentencing Guidelines (the provision governing illegal reentry) authorizes the sentencing court to consider departing downward from the advisory Guidelines sentencing range to account for the discharged state sentence, which could have been served concurrently with the sentence for illegal reentry but for the fact that Mr. Polanco Gomez came into federal custody to face this prosecution following his release from state custody. In addition, while the Probation Department indicates at Paragraph 57 of the Presentence Investigation Report that Mr. Polanco-Gomez has an undischarged term of imprisonment in connection with his state sentence, his submission maintains that his state term has concluded.

The Government did not address these issues in its sentencing submission. *See* Dkt. 26. Consequently, at Mr. Polanco-Gomez's sentencing on May 8, 2023, the Government should be prepared to provide its understanding of whether he has, in fact, fully served his state sentence, as he claims, or whether a portion of it remains to be served, as Probation claims. In addition, if the

Government opposes Mr. Polanco-Gomez's request for a downward departure under Application Note 7 to § 2L1.2, the Government must file a supplemental sentencing submission by May 6, 2023, setting forth the reasons for its opposition. That submission should address both Application Note 7, as well as the seemingly analogous circumstances contemplated under §§ 5G1.3 and 5K2.23.

SO ORDERED.

Dated: May 5, 2023
New York, New York



JOHN P. CRONAN
United States District Judge